



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MDV/156254

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2014, under Wis. Stat., §49.45(5), to review a decision by Columbia County Health & Human Services to deny Medical Assistance (MA), a hearing was held on April 23, 2014, by telephone.

The issues for determination are whether petitioner divested property, and if so, whether the divestment was cured.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Becky Wegner
Columbia County Health & Human Services
P.O. Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a 93-year-old resident of Columbia County.
2. Petitioner applied for nursing home MA in November, 2013, seeking coverage to start December 1, 2013. Eventually by a notice dated March 5, 2014, the county denied coverage for the period December 1, 2013 through January 14, 2014 due to divestment. MA was opened effective January 15, 2014.

3. In 2012 petitioner loaned \$18,000 to her daughter, who runs the family business, a funeral home, that petitioner formerly operated. The loan had no specific repayment terms.
4. In June, 2013, petitioner loaned another \$20,000 to her daughter for the funeral home. That loan included a promissory note that called for monthly payments of \$427.36 according to a written amortization schedule. The loan will be repaid within petitioner's life expectancy.
5. Petitioner's daughter repaid \$5,000 in October, 2013, and \$6,000 in December, 2013, both on the 2012 loan. Petitioner paid her nursing home with the \$5,000, and she purchased a funeral trust with the \$6,000.
6. On December 26, 2013, petitioner's daughter signed a promissory note to repay the remainder of the 2012 loan according to an amortization schedule at \$150.37 per month. Again, the loan will be repaid fully within petitioner's life expectancy.
7. The county determined that the divested amount was the \$11,000 repaid to petitioner as balloon payments.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Admin. Code §DHS 103.065(4)(a); MA Handbook, Appendix 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (\$243.49 in 2013). MA Handbook, App. 17.5.2.2.

A loan is a divestment unless it meets certain criteria. It must be actuarially sound (paid back within the lender's life expectancy), it must be repaid in equal monthly payments with no balloon or deferred payment, and it does not allow cancellation upon the lender's death. Wis. Stat., §49.453(4c); Handbook, App. 17.12.2.

A divestment can be cured by returning the asset to the MA applicant/recipient. Wis. Admin. Code, §DHS 103.065(4)(d)2.c; Handbook, App. 17.4, no. 3.

The 2012 loan was a divestment when made because it included no repayment terms whatsoever. The county worker misunderstood the message from the call center in determining the divestment amount. The divestment amount was \$13,000 *as of the application date* because \$18,000 was loaned and \$5,000 repaid. The idea of a balloon payment is something that would happen in the future, that is, no or small payments are made initially with a large balloon payment sometime in the future. If money is repaid to the MA applicant, the amount repaid is subtracted from the divestment; it is not the amount of the divestment. Thus as of the application date the divested amount was \$13,000. It is notable that the \$20,000 loan is not included because when it was made a promissory note calling for regular monthly payments within petitioner's life expectancy was signed.

\$13,000 was divested prior to the application. In December, 2013, the transaction changed again. \$6,000 was repaid, leaving a balance of \$7,072. Petitioner's daughter signed a promissory note in December calling for regular monthly payments to be made within petitioner's life expectancy. In essence, the \$7,072 was returned to petitioner and re-loaned to her daughter in an allowable promissory note.

I conclude, therefore, that although the original \$18,000 loan was a divestment, the divestment was cured by the combination of repayment and an allowable promissory note. The cure took place in December, 2013, and thus petitioner would be eligible for nursing home MA effective December 1, 2013, the date that was originally requested. The monthly repayments to petitioner should be counted toward her monthly cost of care.

CONCLUSIONS OF LAW

Although petitioner originally divested money by loaning it to her daughter with no repayment terms, the divestment was cured in December, 2013 when her daughter partially repaid the loan and signed an allowable promissory note for the remainder that was owed.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to remove the divestment penalty from petitioner's MA determination and find her eligible for MA as of December 1, 2013, with cost of care to be determined using her monthly income including loan repayments from the two promissory notes signed in 2013. The county shall take the action within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of April, 2014

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 28, 2014.

Columbia County Health & Human Services
Division of Health Care Access and Accountability